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Job Options, Inc

Fax

To: Mr. John Heyer

From: William R. Mead, CEO

Committee for Purchase from People

Job Options, Inc.

Who Are Blind or Severely Disabled

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Pages: 4

Phone:

Date: 2/7/2005

Re: Comments to Proposed Rules

CC: Mr. Steven B. Schwalb

☒ **Urgent**

☐ **For Review**

☐ **Please Comment**

☐ **Please Reply**

☐ **Please Recycle**

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February 7, 2005

Via E-mail and fax

President's Committee for Purchase from People Who Are Blind
Or Severely Disabled
1421 Jefferson Davis Highway
Jefferson Plaza 2, Suite 10800
Arlington, VA 22202-3259
Attn: Mr. John Heyer

Dear Mr. Heyer:

Re: Comments to proposed rules regarding Javits-Wagner-O'Day program (Docket No. 2004-01-01)

Job Options, Inc.

Job Options has been a provider under the Javits-Wagner-O'Day (JWOD) program for almost 17 years. The contracts were originally held by Mental Health Systems, Inc. but were novated to a new organization, Job Options, in 1994 in order for them to be managed by an organization dedicated to providing employment opportunities for people with disabilities. Currently, Job Options provides employment in shelf stocking, food services, custodial, laundry and management services to approximately 400 people with disabilities.

Source of concerns

The management of Job Options, Inc. (JOI) understands the concerns of the Committee for Purchase from People Who Are Blind or Severely Disabled (Committee) regarding reports of excess compensation for executives of not-for-profit organizations. We believe these organizations, by exceeding (or pushing) the bounds of acceptable compensation have brought understandable criticism to agencies engaged in activities under JWOD. This is particularly unfortunate because the JWOD program is so cost effective in comparison to other governmental activities, and the criticism overshadows the great work being done.

We also disapprove of mismanagement of not-for-profit agencies. Not-for-profit agencies must be governed in a manner that insures that they meet the needs of their communities. We believe that not-for-profits must be governed by volunteer boards of community members who have no opportunity to benefit financially from the activities of the not-for-profit they govern and who are free of any other conflict of interest that would impair their ability to govern responsibly.

Our concerns

In spite of these concerns, we believe that the proposed rules encroach on the authority of other Federal and State agencies, exceed the traditional reach of the Committee, are contrary to other established standards and change the nature of the interrelation between the Committee, NISH and the Community Rehabilitation Programs (CRPs). We understand that the Committee is simply proposing rules for participation in the JWOD program and does not intend to attempt to set standards for not-for-profits generally, but the proposed rules would impact directly approximately 500 not-for-profits nationwide. Furthermore, these not-for-profits range from small agencies serving small communities or a narrow range of disabilities to some of the largest and best-known not-for-profit agencies in the country. Furthermore, some JWOD agencies are part of religious or public educational institutions that cannot or would not change their governance to meet the Committees rules. Therefore, the proposed rules would have a sweeping impact, and some agencies might opt to end their participation in JWOD for reasons having nothing to do with the original impetus for these new rules. This would be disruptive to the system and cost jobs for people with disabilities. This is, obviously, in direct contradiction to the goals of all of us.

Encroaching on the authority of other agencies

It is our understanding that the Internal Revenue Service (IRS) has the authority to review and regulate the compensation programs of not-for-profit agencies. They have established standards for compensation, methods for meeting these standards, staff resources trained to evaluate compensation levels and methods and authority to level penalties ranging from Intermediate Sanctions to removal of 501(c)3 status.

For the Committee to issue new guidelines for compensation would be a duplication of those already in place by the IRS. Besides the sheer duplication of effort, any differences between the standards set by the Committee and those set by the IRS would be subject to considerable controversy and possible legal challenges. Why, if the IRS has established standards, should the Committee establish different standards? What is different about not-for-profit agencies operating contracts under JWOD and those that don't? Both kinds of agencies are meeting the same general needs of the community under identical corporate tax rules. We don't believe there is any justification for establishing different compensation standards for JWOD agencies. Dealing with inevitable challenges would drain precious resources from our mission and would be unlikely to improve governance of not-for-profit agencies.

The Committee also proposes standards for governance such as the size and turn over of the boards of directors of not-for-profits. This encroaches on the authority of the various State departments of corporations (or similar State agencies) that establish rules for the governance of corporations. Not-for-profit agencies are incorporated under State laws not Federal laws. For the Committee to establish tougher rules would be for the Federal Government to encroach on the authority reserved to the States.

The IRS and State agencies charged with overseeing not-for-profit corporations have the staff resources and expertise to do this job. The Committee does not. Staff would have to be trained in accounting, compensation evaluation and governance standards in complete duplication of the expertise that already exists in other agencies. This duplication would be a waste of resources that should be used to increase employment opportunities for people with disabilities.

Finally, these agencies have regulatory authority to impose penalties designed to both discourage and correct violations of their standards. The Committee does not and would have to establish new penalties that would probably involve reduction or elimination of participation in JWOD. These would not necessarily correct the violations that led to the penalties nearly as well as IRS regulations that could require a retroactive correction of excessive compensation.

Rather than duplicate the regulations and expertise of State and Federal agencies, we believe the Committee should assertively cooperate with those agencies when it discovers or suspects that a not-for-profit agency participating in JWOD is violating established standards. This would be at least as effective as the Committee duplicating these other agency's efforts while avoiding the additional expenditures that would be required.

Quite simply: why do a job that other agencies are already fully equipped and able to do?

Exceeding the traditional reach of the Committee

The proposed rules exceed the traditional activities of the Committee that have been directly involved in ensuring that the JWOD program is applied fairly and results in employment opportunities for people with disabilities. The JWOD legislation is rather specific in the requirements it sets out for participation in the program. We wonder if the Committee has the authority to expand its activities beyond this traditional arena. In particular, rules regarding governing board composition and size seem to be completely outside the requirements for participation in JWOD. These issues should be left to the States, which regulate corporate governance.

Again, the inevitable challenges and controversy that these rules will engender will distract the whole system from its mission. Resources, both financial and personnel, will be drained away from core activities and attaining the mission of JWOD will, thus, be impaired.

Rules contrary to established standards

We believe the rules regarding compensation, in particular, are contrary to currently established rules and court decisions. It is unclear to us how the Committee can exceed or violate these standards without further challenge.

The IRS has established standards that require a comparison of compensation for not-for-profit agency directors with prevailing compensation in similar sized and focused not-for-profit agencies. It even allows comparison of not-for-profit compensation with that in the for-profit realm. To limit comparisons to the compensation of upper level Federal executives unduly limits the range of compensation to which that of not-for-profit executives can be compared. Moreover, it's not an appropriate comparison.

Government employees at the higher levels are clearly under compensated in comparison to any other sector of the economy. The salaries of government executives (Federal, State and local) with responsibilities for management of billions of dollars, pales in comparison to executives in the private sector with similar responsibilities. It could be argued that these salaries are appropriate since the positions are filled. This ignores the other non-monetary compensation that these government executives receive. Beyond the benefits and security in many of these positions, they also offer opportunities to set policy for the country as a whole, opportunities for considerable advancement, and (not insignificantly) power and prestige. This non-monetary compensation is not available to community not-for-profit agency executives. While both may derive a deep sense of accomplishment from their work, most not-for-profit executives do not have opportunities for advancement nor the prestige and power that upper level government executives may have. Thus, to compare the compensation of not-for-profit executives to that of government executives is inappropriate.

A comparison with both not-for-profit compensation and for-profit compensation is much more apropos. Not-for-profit agencies compete in the marketplace for managerial and leadership expertise. While many not-for-profit executives are drawn to the mission of the not-for-profit and are thus willing to accept a smaller wage, many are not that committed to the mission above their own and their family's financial well-being. Therefore, not-for-profit agencies compete with every other segment of the marketplace for competent executives. To limit further ability to compete on salary, would be a disservice to the not-for-profit community and would impair the attainment of mission. The job of managing a not-for-profit is no less difficult than the job of managing any other business. Not-for-profit executives have to deal with customers, employees, donors, government regulators, lending institutions and a volunteer board of directors. At any revenue level, this is no less difficult than managing a profit making company. Not-for-profit executives deserve to be appropriately compensated and the appropriateness of that compensation cannot be fairly measured against that of senior government executives.

In a case heard by the U. S. District Court for the Eastern District of Missouri, (Call A Nurse, Inc. vs. Donna Shalala, 59F Supp. (E. D. Mo. 1999)), the issue of the suitability of

a comparison in establishing the appropriateness of compensation was decided. The court held that comparisons for the purpose of evaluating salary levels must be narrowly focused on the nature of the work being performed. In this case a home health agency director's salary could not be compared to the salary of an executive in a similar health field, but had to be in the same field and the same State. Even though the Secretary of Health and Human Services is given broad discretion in establishing proper methods for determining reasonableness of costs, in this case the Court upheld the contention that the comparison used was arbitrary and capricious.

The comparison in this case between a health agency in one State compared to another different one in a nearby State, is much closer than comparing a not-for-profit executive's salary to a senior government executive's salary. Yet the Court rejected this as being inappropriate. The Committee's proposed rule is not likely to withstand challenge and, thus, should be abandoned in favor of the methods and standards already established by the IRS.

Change in relationship between NISH, CRPs and the Committee

This is a much more subtle issue. The success of the JWOD program depends on the working relationship between the Committee, NISH and the CRPs. Each has a different, yet important, role to play in attaining the goal of JWOD. While there is, naturally, disagreement between these entities from time to time, the relationship has, generally, been mutually supportive and cooperative. Without that cooperation, JWOD could not have reached its current enviable level of success. Certainly, there is a degree of oversight between both NISH and the Committee in their relations with the CRPs. The proposed rules would take that oversight to a new level. Conflicts would arise outside the area of employment opportunities for people with disabilities. CRPs would conceivably be in dispute about general issues of governance and compensation. As indicated above, this would drain resources and attention away from our main objective.

Rather than add to potential sources of conflict between these three entities, we should be striving to find ways to reduce conflict and increase cooperation. This does not mean that the Committee should evade its responsibilities for the operation of the JWOD program, but it does mean that as the JWOD program grows in size and complexity, that its potential is more likely to be fulfilled if we find better ways to work together. Unfortunately, we believe that the relations between these entities are already too distant. Adding the proposed oversight to the responsibilities of the Committee will only add to this problem. Noncompliance with rules should not be tolerated, but if enforcement is left to other agencies, one less impediment in relations between CRPs, NISH and the Committee will be present.

Summary

The management of JOI shares the concerns of the Committee regarding excessive compensation and inappropriate governance in not-for-profit agencies operating under JWOD. We believe that these wrongdoings and indiscretions must cease. They cause

irreparable damage to the efforts we are all committed to making. We support the Committee taking assertive steps to insure that any violations are dealt with aggressively by the agencies charged with enforcing standards of compensation and governance. We do not, however, believe that the Committee should add enforcement of compensation and governance standards to its duties. Other agencies are already charged with these duties, have the resources and expertise to evaluate violations and the authority to level penalties where necessary. Their standards and methods are already widely accepted and are unlikely to be challenged. Undertaking these kinds of regulatory duties would strain the Committee's resources, open it to legal challenges and distract it from its primary mission of providing employment opportunities for people with disabilities. Finally, adding these duties could fundamentally change the relationship between the Committee, NISH and the CRPs in a way that would interfere with attainment of the mission while adding nothing to adherence to standards of governance and compensation over what would be attained by existing agencies.

By: Job Options, Inc.

Name: William R. Mead, Ph.D., CEO

Date: February 7, 2005

CC: Steven B. Schwalb

Chairperson

Committee for Purchase from People Who Are Blind or Severely Disabled